

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI**

MORTGAGE RESEARCH CENTER, LLC)
(D/B/A VETERANS UNITED AND)
VETERANS UNITED HOME LOANS),)
Plaintiff,)
v.)
BROKER SOLUTIONS, INC. (D/B/A)
NEW AMERICAN FUNDING),)
Defendant.)
Case No. 2:16-cv-4073
JURY TRIAL DEMANDED

COMPLAINT

Mortgage Research Center, LLC (d/b/a Veterans United and Veterans United Home Loans) (“Veterans United”) alleges against Defendant Broker Solutions, Inc. (d/b/a New American Funding) (“New American”) as follows:

INTRODUCTION

1. This lawsuit arises out of New American’s unlawful use of a house-shaped logo on its Internet website <http://www.homeloansforva.com> (the “New American Website”) that is confusingly similar to Veterans United’s well known house-shaped logo for which Veterans United has obtained a federally-registered service mark, in violation of the Trademark Act of 1946, 15 U.S.C. §§ 1051 *et seq.* (the “Lanham Act”) and the common law of the State of Missouri.

2. Veterans United is the owner of a federally-registered service mark in the design of its distinctive house-shaped logo, Registration No. 4,376,507 (the “Veterans United Registered House Mark”).

3. With knowledge of the Veterans United Registered House Mark, and without Veterans United's authorization, New American has used and continues to use a house-shaped logo on the New American Website that is confusingly similar to the Veterans United Registered House Mark. These acts constitute willful infringement of the Veterans United Registered House Mark as well as false designation of origination and/or unfair competition.

4. As a result of New American's ongoing willful infringement of the Veterans United Registered House Mark and acts of unfair competition, Veterans United has suffered, is suffering, and, unless New American's unlawful acts are enjoined by the Court, will continue to suffer immediate and irreparable injury to its business, reputation, and goodwill for which there is no adequate remedy at law. Veterans United therefore is entitled to injunctive relief and damages as set forth herein.

PARTIES

5. Veterans United is a Missouri limited liability company with its principal place of business at 1400 Veterans United Drive, Columbia, Missouri, 65203.

6. On information and belief, New American is a California corporation with its principal place of business at 14511 Myford Road, Suite 100, Tustin, California 92780.

JURISDICTION AND VENUE

7. The Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121, 28 U.S.C. § 1331, 28 U.S.C. § 1338, and 28 U.S.C. § 1367. The Court has subject matter jurisdiction over the state law claims pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367(a).

8. New American is subject to the Court's specific and general personal jurisdiction pursuant to principles of due process and/or the Missouri long-arm statute, Mo. Rev. Stat. § 506.500, because the acts of infringement and unfair competition identified herein occurred in

this District and the State of Missouri and caused injury to Veterans United in this District and the State of Missouri, and because New American regularly conducts business and enters into contracts in this District and the State of Missouri. New American's contacts with this District and the State of Missouri include publishing the New American Website, which provides advertisements and information regarding New American's services to consumers in this District and the State of Missouri.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) because a substantial part of the events or omissions giving rise to Veterans United's claims occurred in this District and because New American regularly conducts business in this District and is subject to personal jurisdiction in this District.

BACKGROUND FACTS

10. Veterans United was founded in 2002 and is a leading provider of home mortgage loans to active duty and veteran members of the United States Armed Forces under the United States Department of Veterans Affairs' ("VA") Home Loan Guaranty Program. Since its founding, Veterans United has provided tens of billions of dollars in VA-guaranteed home mortgage loans to active duty and veteran service members and has achieved a national reputation as a leader in the VA home loan industry.

11. Veterans United is the owner of a federally-registered service mark in the design of its distinctive house-shaped logo, Registration No. 4,376,507, issued by the United States Patent and Trademark Office ("USPTO") on July 30, 2013 (the "Veterans United Registered House Mark"). The Veterans United Registered House Mark consists of an outline of a house containing three white stars above two white stripes separating the house into segments, as depicted below:



The Veterans United Registered House Mark was first used in commerce in Missouri and throughout the United States as early as August 2008. A true and correct copy of the Certificate of Registration for this mark is attached as **Exhibit A**.

12. Veterans United has used the Veterans United Registered House Mark in commerce in Missouri and throughout the United States, including on each page of Veterans United's Internet website <http://www.veteransunited.com> (the "Veterans United Website"), to reflect its status as a valuable and unique financial resource for thousands of active duty and veteran service member homebuyers and their families. A representative specimen of Veterans United's use of the Veterans United Registered House Mark in commerce, which Veterans United filed with the USPTO together with its application for registration of the Veterans United Registered House Mark, is attached as **Exhibit B**.

13. As a result of Veterans United's efforts, the Veterans United Registered House Mark has become well and favorably known to the general public as associated with Veterans United. Veterans United has established significant goodwill in and public recognition of the Veterans United Registered House Mark, which is inherently distinctive and/or has acquired secondary meaning as an identifier of Veterans United and its services.

14. Veterans United displays the Veterans United Registered House Mark with a valid trademark registration notice, including on each page of the Veterans United Website, in accordance with 15 U.S.C. § 1111.

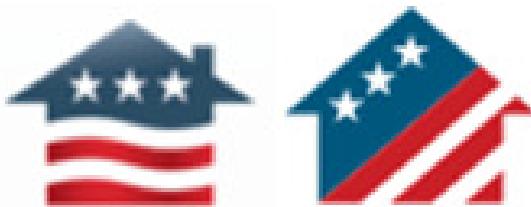
15. On information and belief, New American also provides VA-guaranteed home mortgage loans to active duty and veteran service members. New American conducts business throughout the United States, including in this District and the State of Missouri.

16. After Veterans United's first use of the Veterans United Registered House Mark, New American began using a similar house-shaped logo on the New American Website, as depicted below (the "New American Logo"):



A true and correct copy of an expert from the New American Website depicting the New American Logo is attached as **Exhibit C**.

17. The New American Logo is confusingly similar to the Veterans United Registered House Mark. The shape of the New American Logo is nearly identical to the shape of the Veterans United Registered House Mark. In addition, the New American Logo, like the Veterans United Registered House Mark, contains three white stars above two white stripes separating the house into segments. These similarities are clearly demonstrated by comparing the two marks side by side:



Veterans United
Registered House
Mark

New American
Logo

18. New American's use of the confusingly similar New American Logo on the New American Website is without license or other authorization from Veterans United.

19. With knowledge of the Veterans United Registered House Mark, New American has knowingly and willfully used, and continues to knowingly and willfully use, the confusingly similar New American Logo in interstate commerce in connection with the sale, offer for sale, and advertising of VA-guaranteed home mortgage loans to active duty and veteran service members through the New American Website.

20. New American has made available and promoted, and continues to make available and promote, the New American Website to countless users in this District and throughout the United States. As a result, New American has gained and continues to gain customers, profits, and other benefits unlawfully and to the detriment of Veterans United.

21. New American's unlawful use of the confusingly similar New American Logo has caused and, unless enjoined by the Court, is likely to continue to cause confusion, mistake, and/or deception among consumers as to affiliation, connection, or association by creating the false impression that services provided by New American and marketed through the New American Website are provided, authorized, or endorsed by, or in some manner associated with, Veterans United. This confusion, mistake, and/or deception has caused and, unless New American's unlawful acts are enjoined by the Court, will continue to cause irreparable harm to the reputation and goodwill symbolized by the Veterans United Registered House Mark.

COUNT I
(Federal Service Mark Infringement – 15 U.S.C. § 1114)

22. Veterans United re-alleges and incorporates herein by reference all preceding paragraphs as if fully set forth herein.

23. Veterans United is the owner of the Veterans United Registered House Mark, which is inherently distinctive and/or has acquired secondary meaning as an identifier of Veterans United and its services.

24. New American has used and continues to use the confusingly similar New American Logo in interstate commerce in connection with the sale, offer for sale, and advertising of VA-guaranteed home mortgage loans to active duty and veteran service members through the New American Website, willfully and in conscious disregard of Veterans United's rights as owner of the Veterans United Registered House Mark, in violation of 15 U.S.C. § 1114.

25. New American's use of the confusingly similar New American Logo has caused and, unless enjoined by the Court, is likely to continue to cause confusion, mistake, and/or deception among consumers as to affiliation, connection, or association by creating the false impression that services provided by New American and marketed through the New American Website are provided, authorized, or endorsed by, or in some manner associated with, Veterans United.

26. New American's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with the Veterans United Registered House Mark, to the great and irreparable injury of Veterans United for which there is no adequate remedy at law.

27. New American's unlawful acts and practices have caused and, unless enjoined by the Court, will continue to cause substantial and irreparable injury to the public and to Veterans United, and Veterans United is entitled to preliminary and permanent injunctive relief and to recover, in addition to its actual damages, New American's profits, enhanced profits and damages, costs, and reasonable attorney fees pursuant to 15 U.S.C. §§ 1114, 1116, and 1117.

COUNT II
(Common Law Service Mark Infringement)

28. Veterans United re-alleges and incorporates herein by reference all preceding paragraphs as if fully set forth herein.

29. Veterans United is the owner of the Veterans United Registered House Mark, which is inherently distinctive and/or has acquired secondary meaning as an identifier of Veterans United and its services.

30. New American has knowingly and willfully used and continues to use the confusingly similar New American Logo in connection with the sale, offer for sale, and advertising of VA-guaranteed home mortgage loans to active duty and veteran service members through the New American Website.

31. New American's use of the confusingly similar New American Logo has caused and, unless enjoined by the Court, is likely to continue to cause confusion, mistake, and/or deception among consumers as to affiliation, connection, or association by creating the false impression that services provided by New American and marketed through the New American Website are provided, authorized, or endorsed by, or in some manner associated with, Veterans United.

32. New American's actions constitute service mark infringement in violation of the common law of the State of Missouri.

33. New American's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with the Veterans United Registered House Mark, to the great and irreparable injury of Veterans United for which there is no adequate remedy at law.

34. New American's unlawful acts and practices have caused and, unless enjoined by the Court, will continue to cause substantial and irreparable injury to the public and to Veterans

United, and Veterans United is entitled to preliminary and permanent injunctive relief and to recover, in addition to its actual damages, New American's profits, enhanced profits and damages, costs, and reasonable attorney fees.

COUNT III
(Federal Unfair Competition – 15 U.S.C. § 1125(a))

35. Veterans United re-alleges and incorporates herein by reference all preceding paragraphs as if fully set forth herein.

36. Veterans United is the owner of the Veterans United Registered House Mark, which is inherently distinctive and/or has acquired secondary meaning as an identifier of Veterans United and its services.

37. New American has knowingly and willfully used and continues to use the confusingly similar New American Logo in interstate commerce in connection with the sale, offer for sale, and advertising of VA-guaranteed home mortgage loans to active duty and veteran service members through the New American Website.

38. New American's use of the confusingly similar New American Logo has caused and, unless enjoined by the Court, is likely to continue to cause confusion, mistake, and/or deception among consumers as to affiliation, connection, or association by creating the false impression that services provided by New American and marketed through the New American Website are provided, authorized, or endorsed by, or in some manner associated with, Veterans United.

39. New American's actions constitute false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

40. New American's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with the Veterans United Registered House Mark, to the great and irreparable injury of Veterans United for which there is no adequate remedy at law.

41. New American's unlawful acts and practices have caused and, unless enjoined by the Court, will continue to cause substantial and irreparable injury to the public and to Veterans United, and Veterans United is entitled to preliminary and permanent injunctive relief and to recover, in addition to its actual damages, New American's profits, enhanced profits and damages, costs, and reasonable attorney fees pursuant to 15 U.S.C. §§ 1125, 1116, and 1117.

COUNT IV
(Common Law Unfair Competition)

42. Veterans United re-alleges and incorporates herein by reference all preceding paragraphs as if fully set forth herein.

43. Veterans United is the owner of the Veterans United Registered House Mark, which is inherently distinctive and/or has acquired secondary meaning as an identifier of Veterans United and its services.

44. New American has knowingly and willfully used and continues to use the confusingly similar New American Logo in connection with the sale, offer for sale, and advertising of VA-guaranteed home mortgage loans to active duty and veteran service members through the New American Website.

45. New American's use of the confusingly similar New American Logo has caused and, unless enjoined by the Court, is likely to continue to cause confusion, mistake, and/or deception among consumers as to affiliation, connection, or association by creating the false impression that services provided by New American and marketed through the New American

Website are provided, authorized, or endorsed by, or in some manner associated with, Veterans United.

46. New American's actions constitute unfair competition in violation of the common law of the State of Missouri.

47. New American's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with the Veterans United Registered House Mark, to the great and irreparable injury of Veterans United for which there is no adequate remedy at law.

48. New American's unlawful acts and practices have caused and, unless enjoined by the Court, will continue to cause substantial and irreparable injury to the public and to Veterans United, and Veterans United is entitled to preliminary and permanent injunctive relief and to recover, in addition to its actual damages, New American's profits, enhanced profits and damages, costs, and reasonable attorney fees.

PRAYER FOR RELIEF

WHEREFORE, Veterans United respectfully prays for a judgment against New American as follows:

- (a) A judgment that New American has infringed the Veterans United Registered House Mark in violation of 15 U.S.C. § 1114 and/or the common law of the State of Missouri;
- (b) A judgment that New American has engaged in unfair competition in violation of 15 U.S.C. § 1125(a) and/or the common law of the State of Missouri;
- (c) A preliminary and permanent injunction restraining New American, its officers, directors, principals, employees, agents, attorneys, representatives, affiliates, and all persons in active concert or participation with one or more of them, from further infringement of the Veterans United Registered House Mark, and from further acts of unfair competition;

(d) An award of all monetary damages to which Veterans United is entitled by law for New American's past and continuing infringement of the Veterans United Registered House Mark and past and continuing acts of unfair competition, including the greater of three times New American's profits or three times any damages sustained by Veterans United on account of New American's acts of infringement and unfair competition, and an order requiring a full accounting of the same;

(e) An award of Veterans United's costs and reasonable attorney fees and disbursements incurred in bringing and prosecuting this action;

(f) An assessment of interest, both pre- and post-judgment, on the damages awarded; and

(g) Any other and further relief that the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Veterans United hereby demands a jury trial on all issues so triable.

Date: March 2, 2016

Respectfully submitted,

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*(d/b/a Veterans United and Veterans
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